

<p align="center"><b>U.S. DEPARTMENT OF ENERGY</b></p> <p align="center"><b>NATIONAL TRANSPORTATION PROGRAM, ALBUQUERQUE</b></p> <p align="center"><b>Standard Operating Procedure</b></p>			
<p><b>Title: Requirements for NTP-A, DOE Traffic Manager, Contractor Transportation Manager, and/or the Carrier Review Board for Placement of Carriers in Temporary Nonuse, Suspension, and/or Debarment</b></p>			
<p>Procedure No:</p> <p align="center"><b>NTP-A-MCEP.004</b></p>	<p>Revision No:</p> <p align="center"><b>8</b></p>	<p>Date:</p> <p align="center"><b>November 2004</b></p>	<p>Page:</p> <p align="center"><b>Page 1 of 12</b></p>

## **1. PURPOSE**

This procedure specifies a consistent approach to performing NTP-A, DOE Traffic Manager, Contractor Transportation Manager, and/or Carrier Review Board activities in compliance with the requirements identified in the Motor Carrier Evaluation Program (MCEP) Management and Methodology Plans. This procedure deals specifically with placing carriers in temporary nonuse, suspension, and/or debarment.

This procedure will also address the creation of the Carrier Review Board and describe its functions within the overall MCEP process. The MCEP Management and Methodology Plans also provide additional information regarding the Carrier Review Board and its function.

## **2. REQUIREMENTS, REFERENCES, ACRONYMS, AND DEFINITIONS**

### **2.1 Requirements**

- a. National Transportation Program *Motor Carrier Evaluation Program (MCEP) Management Plan*.
- b. National Transportation Program *Motor Carrier Evaluation Program (MCEP) Methodology Plan*

### **2.2 References**

- a. *Code of Federal Regulations*, Title 41, Part 109-40, “*Transportation and Traffic Management*,” as amended.

### **2.3 Acronyms**

CRB	Carrier Review Board
DOE	U.S. Department of Energy
DOT	U.S. Department of Transportation
HAZMAT	Hazardous Materials
MCEP	Motor Carrier Evaluation Program
NTP-A	DOE National Transportation Program-Albuquerque

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## 2.4 Definitions

MCEP NTP-A Program Manager: Provides functional oversight and approval of MCEP activities; defines policy; determines procedures; directs funding allocation; and controls the dissemination of information from the evaluation process to the field.

MCEP Carrier Review Board: Provides oversight in the determination and overall process implementation of carrier suspension, and/or debarment. The Carrier Review Board will consist of the NTP-A Program Manager and four other representatives (appointed by the NTP-A Program Manager) from DOE transportation personnel.

Temporary Nonuse: Is notification of the carrier of DOE's intent to place them in temporary nonuse status for up to 90 days. The specific reasons for temporary nonuse are listed in Section 3.1 of this procedure.

Suspension: Suspension is disqualifying a transportation service provider (TSP) from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. The specific reasons for suspension are listed in Section 3.2 of this procedure.

Debarment: Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The specific reasons for debarment are listed in Section 3.3 of this procedure.

Truckload (TL): For the purposes of this program, any shipment of 10,000# or greater tendered to a carrier at one time, on one bill of lading, will be considered a Truckload (TL) shipment.

Less-Than-Truckload (LTL): For the purposes of this program, any shipment weighing less than 10,000#, tendered to a carrier at one time, on one bill of lading, will be considered a Less-Than-Truckload (LTL) shipment.

## 3. GENERAL REQUIREMENTS, LETTERS, AND NOTICES

Three different levels of nonuse may affect carriers. They are temporary, suspension, and debarment. The initiating officer (NTP-A, DOE Traffic Manager and/or Contractor) has the authority to place a carrier in temporary nonuse based on the criteria listed in section 3.1. Only the Carrier Review Board may place a carrier in suspension and/or debarment status found in sections 3.2 and 3.3 respectively.

### 3.1 Temporary Nonuse

Temporary nonuse can be initiated by NTP-A, DOE Traffic Managers and/or Contractor Transportation Managers and cannot exceed 90 days in length.

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### **3.1.1 Reasons for Temporary Nonuse**

The reasons for temporary nonuse are:

1. Willful violations of the terms of the rate tender
2. Persistent or willful failure to meet requested packing and pickup service
3. Repeated failure to meet required delivery dates
4. Repeated violation of Department of Transportation (DOT) hazardous materials regulations
5. Mishandling of freight, damaged or missing transportation seals, improper loading, blocking, packing or bracing of property (10% of the shipments tendered)
6. Improper routing of property
7. Subjecting the DOE's shipments to unlawful seizure or detention by failing to pay debts
8. Operating without legal authority
9. Failure to settle claims according to Government regulations; or
10. Repeated failure to comply with regulations of DOT, Surface Transportation Board, State or local governments or other Government agencies.

### **3.1.2 Letter for Temporary Nonuse**

When a carrier is to be notified of a temporary nonuse status, the following information must be provided to the carrier and in the following manner:

- Certified – return receipt requested
- Effective dates of the proposed temporary nonuse (not to exceed 90 days)
- Scope of the proposed temporary nonuse
- Facts relied on to support the specified cause(s) for the temporary nonuse.

## **3.2 Suspension**

Suspension is disqualifying a transportation service provider (TSP) from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. Only the Carrier Review Board may place a carrier in suspension.

### **3.2.1 Reasons for Suspension**

The reasons for suspension are:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation
2. Violation of Federal or State antitrust statutes
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property

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4. Violations of the Drug-Free Workplace Act of 1988 (Public Law 100-690) as indicated by the failure to comply with the requirements of the clause of 52.223-6 Drug-Free Workplace, or such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace
5. Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States
6. Commission of an unfair trade practice as defined in 48 CFR Part 9.403, and
7. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the TSP as a transporter of the Government's property or the HHG of its employees relocating for the Government.

Indictment for any of the causes listed above constitutes adequate evidence for suspension. The Carrier Review Board may upon adequate evidence also suspend a carrier for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

### **3.2.2 Period of Suspension**

1. Suspension shall be for a temporary period pending the completion of investigations, and any ensuing legal proceedings, unless sooner terminated by the Carrier Review Board or as provided below.
2. If legal proceedings are not instituted within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension in which case it may be extended an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within the period.
3. The Carrier Review Board shall notify the Department of Justice of the proposed termination of the suspension at least 30 days before the 12 month period expires, to give that Department an opportunity to request an extension.

### **3.2.3 Scope of Suspension**

The scope of suspension shall be the same as that for debarment (48 CFR 9.406-5), except that the procedures of 9.407-3 shall be used in imposing suspension.

### **3.2.4 Notice of Suspension**

If a carrier and any specifically named affiliates are suspended, the Carrier Review Board must immediately advise the carrier by certified mail, return receipt requested-

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1. That they have been suspended and that the suspension is based on an indictment of other adequate evidence that the contractor has committed irregularities (1) of a serious nature in business dealings with the Government or (2) seriously reflecting on the propriety of further Government dealings with the carrier - any such irregularities shall be described in terms sufficient to place the carrier on notice without disclosing the Governments evidence.
2. That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensure of the cause(s) relied upon under 48 CFR Part 9.407-2 for imposing suspension.
3. Of the effect of the suspension that within 30 days after receipt of the notice, the carrier may submit, in person, in writing, or through a representative, information and arguments in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts
4. That additional proceedings to determine disputed material facts will be conducted unless (1) the action is based on an indictment or (2) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

### **3.3 Debarment**

Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The seriousness of the TSP's acts or omissions and the mitigating factors must be considered in making any debarment decisions. Only the Carrier Review Board may place a carrier in debarment status.

#### **3.3.1 Reasons for Debarment**

The factors associated with the debarment of a TSP are:

1. Conviction or civil judgment for the commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.
2. Violations of Federal or State anti-trust statutes relating to the submission of offers
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property
4. Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States
5. Commission of any other offense indication a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor

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The Carrier Review Board may also debar a carrier based on a preponderance of the evidence for;

1. Violations of the terms of a Government contract or subcontract so serious as to justify debarment, such as
  - a. Willful failure to perform in accordance with the terms of one or more contracts, or
  - b. A history of failure to perform, or of unsatisfactory performance of, one or more contracts
2. Violations of the Drug-Free Workplace Act of 1988 as indicated by;
  - a. Failure to comply with the requirements of the clause oat 52.223-6 Drug-Free Workplace; or
  - b. Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace
3. Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States
4. Commission of an unfair trade practice as defined in 48 CFR Part 9.403
5. Based on a determination by the Attorney General of the United States, or designee, that the carrier is not in compliance with Immigration and Nationality Act Employment provisions. The Attorney General’s determination is not reviewable in the debarment proceedings
6. Any other cause or so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

### **3.3.2 Period of Debarment**

1. Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that:
  - a. Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 may be for a period not to exceed 5 years; and
  - b. Debarments under 48 CFR 9.406-2(b)(2) shall be for one year unless extended pursuant to paragraph 3 of this section.
2. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
3. The Carrier Review Board may extend the debarment for an additional period if the Board determines that an extension is necessary to protect the Government’s interest. A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. Debarments under 48 CFR 9.406-2(b)(2) may be extended for additional periods of one year if the Attorney General or designee determines that the TSP continues to be in violation of the employment provisions of the Immigration and Nationality Act. If debarment for an additional period is determined to be necessary, the procedures of 48 CFR 9.406-3 shall be followed to extend the debarment.

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4. The CRB may reduce the period or extent of debarment upon the TSPs request supported by documentation or reasons such as;
  - a. Newly discovered material evidence;
  - b. Reversal of the conviction or civil judgment upon which the debarment was based;
  - c. Bona fide change in ownership or management;
  - d. Elimination of other causes for which the debarment was imposed; or
  - e. Other reasons the CRB deems appropriate.

### **3.3.3 Scope of Debarment**

1. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a TSP may be imputed to the TSP when the conduct occurred in connection with the individual's performance of duties for or on behalf of the TPS, or with the TSP's knowledge, approval, or acquiescence. The TSP's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
2. The fraudulent, criminal, or other seriously improper conduct of one TSP participating in a joint venture or similar arrangement may be imputed to other participating TSPs if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these TSPs. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

### **3.3.4 Notice of proposal to Debarment**

The Carrier Review Board advising the carrier shall issue a notice of proposed debarment and any specifically name affiliates, by certified mail, return receipt requested

1. The debarment is being considered
2. Of the reasons for the proposed debarment in terms sufficient to put the carrier on notice of the conduct or transaction(s) upon which it is based
3. Of the cause(s) relied upon under 48 CFR Part 9.406-2 for proposing debarment
4. That, within 30 days after receipt of the notice, the carrier may submit, in person, in writing, or through a representative, information and arguments in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.
5. Of the DOE's procedures governing debarment decisionmaking
6. Of the effect of the issuance of the notice of proposed debarment, and
7. Of the potential effect of an actual debarment.

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### **3.4 Carrier Review Board**

The Carrier Review Board (CRB) will be made up of five members who will ordinarily be DOE transportation personnel. The chairman of the CRB will be the only permanent member of the board and will be the NTP-A MCEP Program Manager. The chairman will select the other four members based on availability of the individual, knowledge of the carrier, and the availability of resources (if necessary) from the department's operations and field office transportation personnel.

Administrative personnel will also be used to record the proceedings, in summary fashion, and will be retained in a three-ring binder in chronological order with an alphabetical case index at the front. The CRB chairman or designee will maintain the summaries for a period of three years. Cases involving the Department of Justice, DOE General Councils Office, or DOE Inspector General's Office that establish a significant legal precedent will be permanently retained.

## **4. PROCEDURE**

Attachment A contains a flow diagram depicting the overall work process associated with temporary nonuse of a carrier.

Attachment B contains a flow diagram depicting the overall work process associated with suspension/debarment of a carrier.

## **5. RECORDS**

Records generated as a result of this procedure are to be identified, classified, and prepared in accordance with DOE Order 200.1, and managed in compliance with the requirements specified in DOE Guidance 200.1. At minimum, the following are to be considered Quality Assurance records:

- Letter of Temporary Nonuse
- Notice of Suspension
- Notice of Debarment
- Carrier Corrective Actions
- Summary minutes of the CRB Meetings

## **6. ATTACHMENTS**

Attachment A – Temporary Nonuse Process Flow Diagram

Attachment B – Suspension/Debarment Process Flow Diagram



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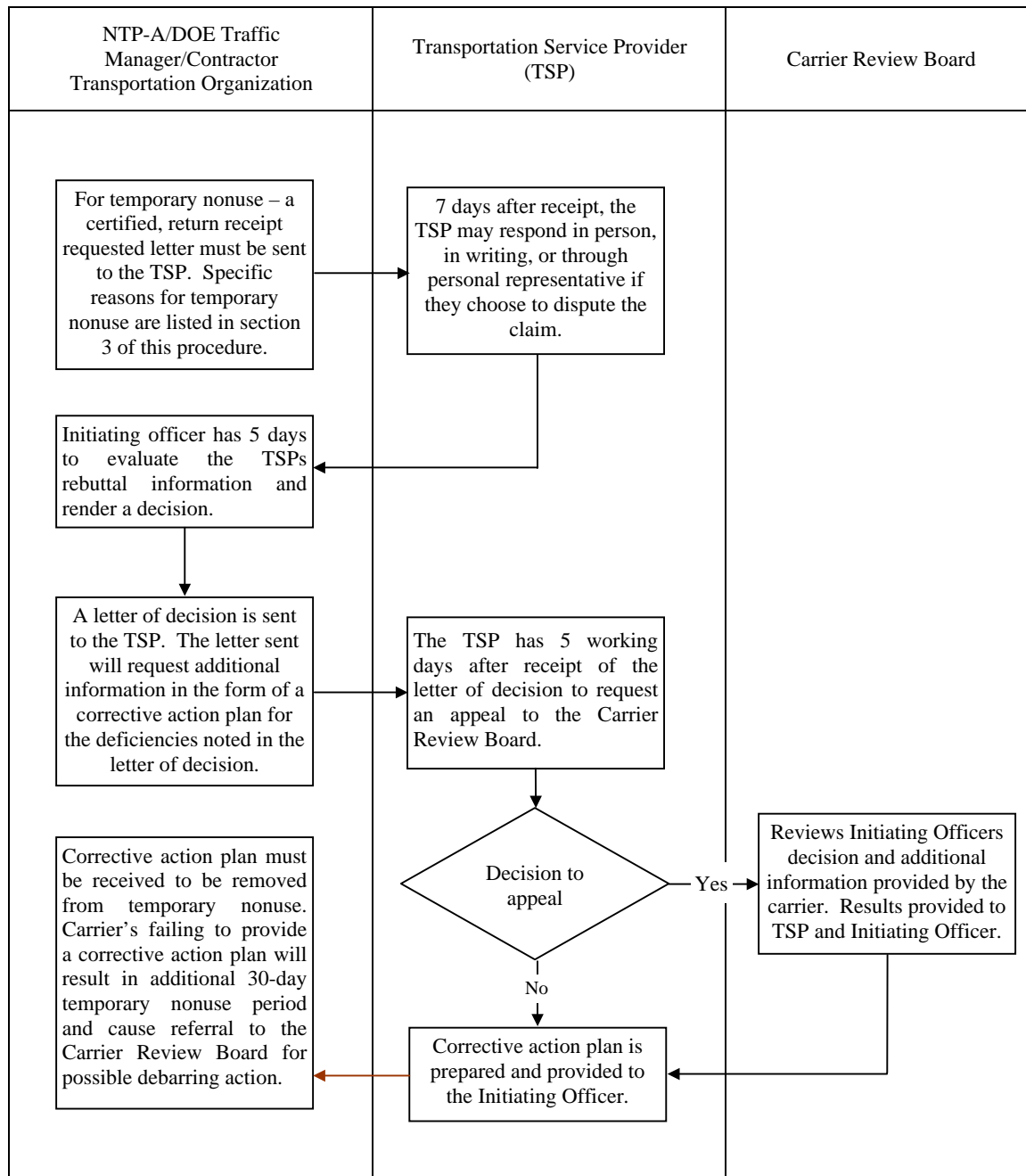
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**Attachment A**  
**Temporary Nonuse Process Flow Diagram**



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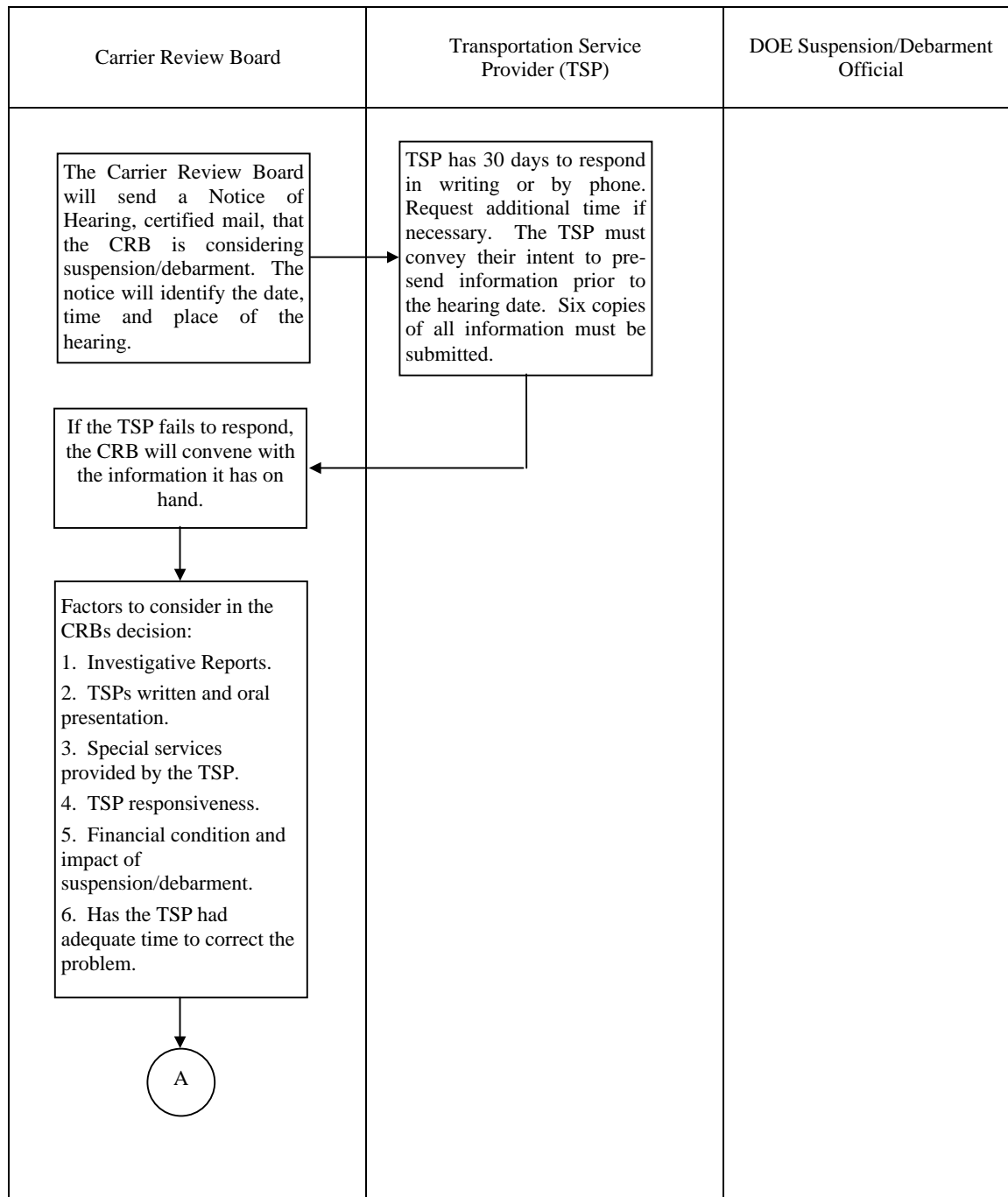
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**Attachment B**  
**Suspension/Debarment Process Flow Diagram**



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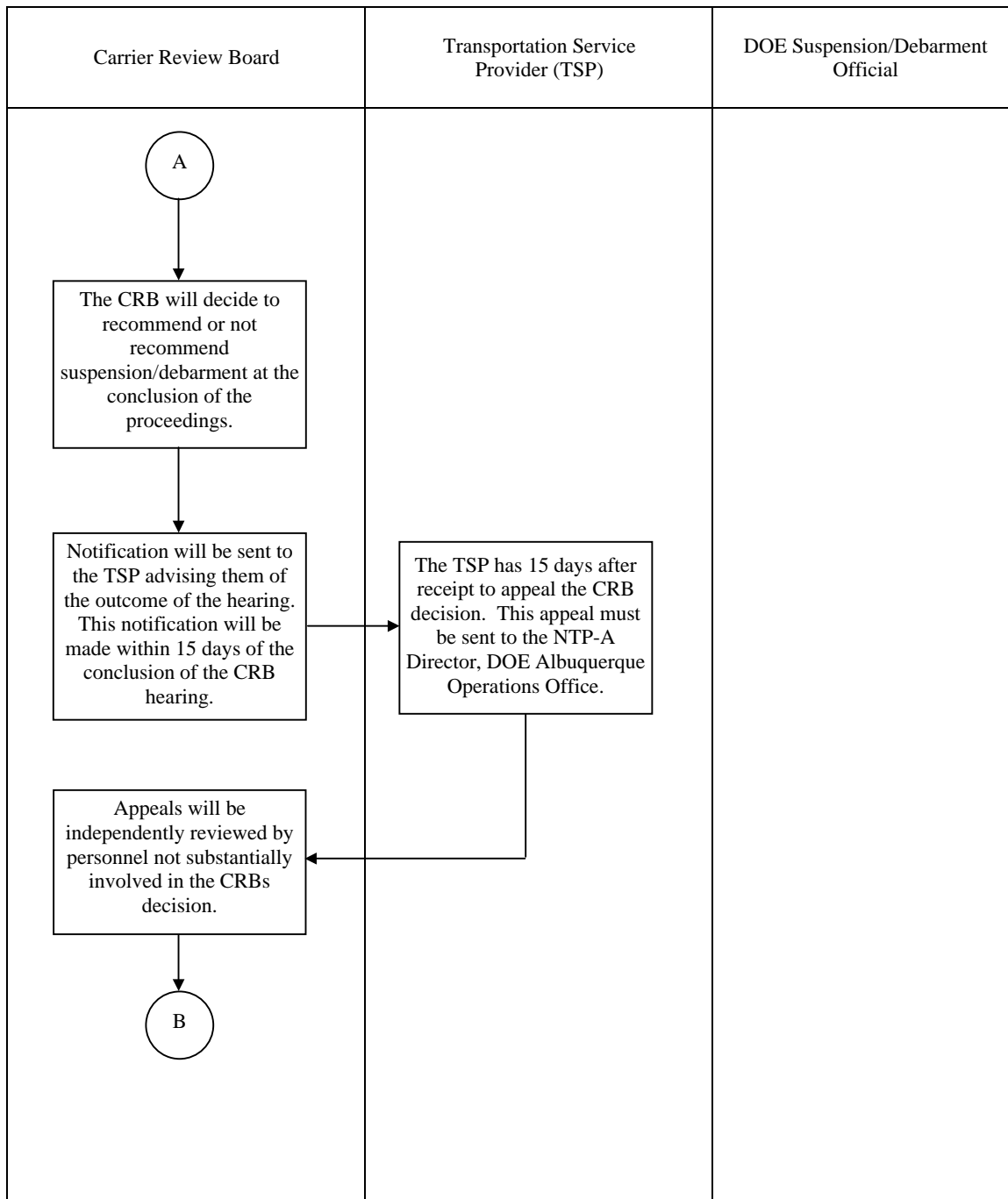
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**Attachment B (cont.)**  
**Suspension/Debarment Process Flow Diagram**



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**Attachment B (cont.)**  
**Suspension/Debarment Process Flow Diagram**

